

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ERICA MILLER, individually, and as  
guardian for minor child, I.M.,

Plaintiffs,

v.

MONROE SCHOOL DISTRICT, a  
political subdivision of the State of  
Washington,

Defendant.

CASE NO. C15-1323-JCC

ORDER DENYING MOTION FOR  
SUMMARY JUDGMENT

This matter comes before the Court on Plaintiffs’ motion for summary judgment (Dkt. No. 44), Plaintiffs’ motion for attorney fees (Dkt. No. 47), Defendant’s motion to strike (Dkt. No. 51), and Defendant’s motion to dismiss counterclaim (Dkt. No. 50). Having thoroughly considered the relevant record, the Court finds oral argument unnecessary and hereby DENIES the motion to strike, DENIES the motion for summary judgment, GRANTS IN PART the motion for attorney fees, and GRANTS the motion to dismiss counterclaim.

**I. BACKGROUND**

The factual background of this case is deeply familiar to both the parties and the Court. Plaintiffs Erica Miller and I.M. (“Miller,” collectively) now move for summary judgment, asking the Court to find that the administrative law judge (ALJ) erred in concluding that Defendant

Monroe School District did not deny I.M. a free appropriate public education (FAPE) at Salem Woods Elementary. (Dkt. No. 44.)

## **II. DISCUSSION**

### **A. Motion to Strike**

As a preliminary matter, the District moves to strike the declarations of Erica Miller (Dkt. No. 45) and Erika Krikorian (Dkt. No. 46) and exhibits thereto. (Dkt. No. 51 at 24.) The District argues that this evidence was not previously in the administrative record. (*Id.*)

The Individuals with Disabilities Education Act (IDEA) provides that the Court “shall hear additional evidence at the request of a party.” 20 U.S.C. §§ 1415(i)(2)(C)(ii); *see also* WAC § 392-172A-05115 (“In any action brought under [the Washington Rules for the Provision of Special Education], the court . . . [h]ears additional evidence at the request of a party.”). “Thus, judicial review in IDEA cases differs substantially from judicial review of other agency actions, in which courts generally are confined to the administrative record and are held to a highly deferential standard of review.” *Ojai Unified Sch. Dist. v. Jackson*, 4 F.3d 1467, 1471 (9th Cir. 1993). The Court has the discretion to determine whether to consider the evidence. *Id.* at 1473.

Here, the Court exercises its discretion to consider the submitted evidence in the hopes that this matter will finally be resolved. The District’s motion to strike is DENIED.

### **B. Motion for Summary Judgment**

Miller seeks reversal of the ALJ’s finding that the aversive interventions performed at Salem Woods did not deny I.M. a FAPE. (Dkt. No. 44 at 2.) Miller asserts that I.M. was denied a FAPE based on three violations of his individual education plan (IEP): (1) isolations that were not held in the front office; (2) the District’s failure to call Miller after I.M. was in isolation for 20 minutes; and (3) the District’s failure to allow I.M. to change locations after he was in isolation for 20 minutes. (Dkt. No. 44 at 8-10.)

#### 1. Review of IDEA Cases

When reviewing a motion for summary judgment in an appeal from an IDEA hearing, the

1 Court does not apply the typical summary judgment standard. *See Ojai*, 4 F.3d at 1474 (9th Cir.  
 2 1993); *see also Harris v. Nenana City Pub. Schs.*, 50 F.3d 14, 1995 WL 25115 at \*1 (9th Cir.  
 3 Jan. 23, 1995) (“Under the IDEA procedures, the motion for summary judgment is simply the  
 4 procedural vehicle for asking the judge to decide the case on the basis of the administrative  
 5 record.”). Nor does the Court employ the typical highly deferential standard of review of agency  
 6 decisions. *See* 20 U.S.C. § 1415(i)(2)(C); *JG v. Douglas County Sch. Dist.*, 552 F.3d 786, 793  
 7 (9th Cir. 2008). Instead, the Court applies a modified *de novo* standard. *Ojai*, 4 F.3d at 1471-73.  
 8 The Court gives due weight to the administrative proceedings, particularly where—as here—the  
 9 administrative decision was careful, impartial, and sensitive to the complexities present. *See id.*  
 10 at 1472, 1476. The Court must consider the findings carefully and address the hearing officer’s  
 11 resolution of each material issue. *County of San Diego v. Cal. Special Educ. Hearing Office*, 93  
 12 F.3d 1458, 1466 (9th Cir. 1996). After such consideration, the Court may accept or reject the  
 13 hearing officer’s findings in part or as a whole. *Id.*

## 14 2. Analysis

15 Miller’s challenge fails. First, as this Court has already stated (*see* Dkt. No. 28 at 7-8),  
 16 I.M. was never placed in isolation. Former Wash. Rev. Code § 28A.600.485(1)(a), applicable at  
 17 that time, defines isolation as “excluding a student from his or her regular instructional area and  
 18 restricting the student *alone* within a room or any other form of enclosure, from which the  
 19 student may not leave.” (Emphasis added.) The ALJ found that no IEP violations occurred,  
 20 because the evidence showed that special education teacher Mairead Kinney and paraeducator  
 21 Trina Eriks always stayed in the quiet room with I.M., meaning I.M. was never left alone. (Dkt.  
 22 No. 4, Ex. 3 at 39.) This Court previously affirmed this conclusion:

23 Had I.M. been left alone in the quiet room, the IEP’s isolation requirements would  
 24 have been triggered and, based on this record, violated. However, Kinney and  
 25 Eriks remained with I.M. in the quiet room at all times. Accordingly, the ALJ  
 26 properly found that no isolation—and therefore no violation of the isolation  
 requirements—occurred.

(Dkt. No. 28 at 7-8.) The Court again upholds that conclusion here.

1 Miller argues that, throughout the events, the District interchangeably used the terms  
2 “seclusion” and “isolation.”<sup>1</sup> (Dkt. No. 44 at 12.) But the language used by the District does not  
3 determine whether the District violated the relevant regulations or I.M.’s IEP.<sup>2</sup> Rather, what  
4 dictates are the relevant laws and what actually occurred. And, as noted above, these factors do  
5 not point to a violation.

6 Miller further maintains that “[t]he evidence shows that I.M. was alone for the majority  
7 of the time he was locked in Room 503.” (Dkt. No. 44 at 11 n.7.) She provides no supporting  
8 authority for this statement, which directly contradicts the weight of evidence at the hearing.

9 Moreover, even if violations of I.M.’s IEP did occur, they did not constitute a denial of a  
10 FAPE. “There is no statutory requirement of perfect adherence to the IEP, nor any reason rooted  
11 in the statutory text to view minor implementation failures as denials of a free appropriate public  
12 education.” *Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811 (9th Cir. 2007). “[O]nly material  
13 failures to implement an IEP constitute violations of the IDEA.” *Id.* at 819.

14 Regarding the location requirement, Miller requested that isolations be held in the front  
15 office at Chain Lake for “an additional set of eyes on the situation.” AR 839-40. At Salem  
16 Woods, although there was no front office, there was a policy that Principal Janna Dmochowsky  
17 would be contacted every time I.M. was placed in the quiet room so that she could observe and  
18 supervise. AR 2071-72. This addressed the “additional eyes” concern, making the lack of front  
19 office a minor implementation failure.

20 Regarding the phone call and location change requirements, these safeguards were  
21 adopted to ensure that I.M. was not placed in lengthy isolations and to allow Miller to “be part of  
22 the team that decides what happens next.” *See* AR 647-48. On November 20, I.M. spent an initial  
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25 <sup>1</sup> Miller also notes that the Court referred to “seclusions” at Salem Woods in its summary  
26 judgment order in the civil action. (Dkt. No. 44 at 11; *see also* Dkt. No. 46-18.) The Court did  
not use the term “isolation.” Nor was the term “isolation” at issue in the civil action.

<sup>2</sup> I.M.’s IEP, like the WAC, uses the term “isolation.” (Dkt. No. 8, Ex. 3 at 1-2.)

20-minute period in the quiet room. AR 2281. No violation of his IEP occurred at this time. Shortly thereafter, he was returned to the quiet room for a period of time between 15 and 30 minutes. AR 2283; Dkt. No. 30-2 at 614; Dkt. No. 46-7 at 4-5. If this period exceeded 20 minutes, it was a technical violation of I.M.'s IEP; however, it ended shortly thereafter, meaning there is little to no chance that a phone call to Miller or a change in location would have materially impacted the situation. On November 21, I.M. spent over 20 minutes in the quiet room without an immediate phone call to Miller or change in location. See AR 2294. But, the evidence shows that I.M. himself requested the additional time to calm down. AR 2294. Given this request, the time in the quiet room did not implicate the concerns underlying the IEP requirements. Ultimately, there is no evidence that the aversive interventions at Salem Woods rose to the level of a material violation of the IDEA.

It is abundantly clear that this matter is emotionally charged on both sides. The Court does not deny that this experience has been difficult for Miller and I.M. At the same time, the Court recognizes the efforts by the District in a similarly difficult position. Simply put, while Miller may be unhappy with the treatment I.M. received, she again fails to demonstrate that the District is liable as a matter of law. The motion for summary judgment is DENIED.

### **C. Motion for Attorney Fees**

Miller moves for an award of attorney fees as the prevailing party in the due process proceeding. (Dkt. No. 47 at 1.) The IDEA provides that "[i]n any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorneys' fees as part of the costs . . . to a prevailing party who is the parent of a child with a disability." 20 U.S.C. § 1415(i)(3)(B)(i)(I). To be considered a prevailing party under the IDEA, "a plaintiff must not only achieve some material alteration of the legal relationship of the parties, but that change must also be judicial sanctioned." *Shapiro v. Paradise Valley Unified Sch. Dist. No. 69*, 374 F.3d 857, 865 (9th Cir. 2004). A "plaintiff is not the prevailing party if his or her success is purely technical or *de minimis*." *Id.*

1 It is true that Miller was successful in showing that I.M. was denied a FAPE at Chain  
 2 Lake Elementary. (Dkt. No. 4, Ex. 3 at 49; *see also* Dkt. No. 50.) A finding that a district denied  
 3 a child a FAPE is the “most significant of successes possible under the [IDEA].” *Park v.*  
 4 *Anaheim Union High Sch. Dist.*, 464 F.3d 1025, 1036-37 (9th Cir. 2006). Thus, this success is  
 5 not *de minimis*. However, as previously noted by this Court, Miller’s “failure on the  
 6 overwhelming majority of her claims warrants a reduction in fees. . . . [T]he magnitude of FAPE  
 7 denial was small . . . . Further, that [Miller] was successful on only four of seventy-three issues  
 8 seriously detracts from her level of success.” (*Miller v. Monroe Sch. Dist. et al.*, C14-1946-JCC, Dkt.  
 9 No. 49 at 10.) Moreover, Miller continues to litigate issues without providing factual or legal  
 10 authority, draining the resources available to the opposing party and this Court.

11 Accordingly, although Miller can be considered a prevailing party under the IDEA, the Court  
 12 exercises its discretion to narrowly limit her award of fees and costs to five percent<sup>3</sup> of the amount  
 13 incurred at the due process hearing stage. This award does not include any fees or costs expended in  
 14 appealing the due process decision, as Miller was not the prevailing party in that stage of litigation.

#### 15 **D. Motion to Dismiss Counterclaim**

16 The District’s unopposed motion to voluntarily dismiss its counterclaim with prejudice  
 17 (Dkt. No. 50) is GRANTED. *See* Fed. R. Civ. P. 41(a)(2); W.D. Wash. Local Civ. R. 7(b)(2)  
 18 (“Except for motions for summary judgment, if a party fails to file papers in opposition to a  
 19 motion, such failure may be considered by the court as an admission that the motion has merit.”).

### 20 **III. CONCLUSION**

21 For the foregoing reasons, the Court DENIES the District’s motion to strike (Dkt. No.  
 22 51); DENIES Miller’s motion for summary judgment (Dkt. No. 44); GRANTS IN PART  
 23 Miller’s motion for attorney fees (Dkt. No. 47); and GRANTS the District’s motion to dismiss  
 24 counterclaim (Dkt. No. 50).

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26 <sup>3</sup> This corresponds with the percentage of claims on which she was successful.

1 DATED this 29th day of July 2016.

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A handwritten signature in black ink, reading "John C. Coughenour", is written over a horizontal line.

John C. Coughenour  
UNITED STATES DISTRICT JUDGE